

As to the Seaboard agreement, the court said:

"If the agreement of the Seaboard Air Line Railway as set out in Finding IV is controlling, equalization with the Chicago-Cairo route was unauthorized because not a 'usually traveled route' between points of origin and destination." (p. 10)

As to the agreement participated in generally by the railroads, including plaintiff and the Seaboard, and which reads exactly like ours, the court said:

"The equalizing agreement participated in generally by the railroads, quoted from in Finding IV and found in full in the Manual of the Quartermaster Corps, volume 2, page 223, makes different provisions as to passenger and freight transportation and, *as to the latter, does not contain the words 'usually traveled route.'* It is for construction if uncertain in its application and, in the absence of a specific showing as to its applicability, a reasonable construction must prevail." (p. 10.)

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"The use of this route for equalization purposes in the absence of a showing does not appear. *It is excessive in its roundabout character and increased mileage.* The defendant, upon this question and to sustain its contention, furnishes the testimony of a witness whose theory is that when a railroad company signs an equalization agreement, it agrees to equalize 'with any kind of a route you can imagine or construct.' *Such a view can not be accepted. It is unreasonable.*" (p. 11.)

The conflict between that case and the decision below in our case is direct and inescapable.

Respectfully submitted,

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